

Serial No. 09/829,314

Page 9 of 14

### **REMARKS**

This response is intended as a full and complete response to the final Office Action mailed April 20, 2006. In the Office Action, the Examiner notes that claims 1-35 are pending and rejected.

In view of the following discussion, Applicant submits that none of the claims now pending in the application are obvious under the provisions of 37 C.F.R. §103.

It is to be understood that Applicant does not acquiesce to the Examiner's characterizations of the art of record or to Applicant's subject matter recited in the pending claims. Further, Applicant is not acquiescing to the Examiner's statements as to the applicability of the art of record to the pending claims by filing the instant response.

### **REJECTIONS**

#### **35 U.S.C. §103**

##### **Claims 1-35**

The Examiner has rejected claims 1-35 under 35 U.S.C. §103(a) as being unpatentable over Kwan (US Patent Application Publication No. 2003/0112796, hereinafter "Kwan") in view of Vargo (U.S. Patent No. 6,356,545, hereinafter "Vargo"), further in view of McClary et al. (U.S. Patent Application Publication No. US 2003/0016699 A1, hereinafter "McClary"). Applicant respectfully traverses the rejection.

As shown by Applicant in the previous response, and admitted by the Examiner in the present Office Action, Kwan and Vargo, alone or in combination, fail to teach or suggest adjusting a length of a second packet according to an adjusted length of a first packet and an arrival time of a third packet received after the second packet. Thus, the Examiner cites Vargo to show a suggestion to cite another reference for teaching this limitation of Applicant's invention. More specifically, the Examiner cites Vargo to show a suggestion to cite McClary, and

Serial No. 09/829,314  
Page 10 of 14

then cites McClary for teaching the additional limitation of Applicant's invention not taught by the combination of Kwan and Vargo.

Applicant acknowledges that Vargo states that "[i]t is also possible to vary the size of the individual packets or to vary the bundling of the packets by techniques that are well known in the art." (Vargo, Col. 11, Lines 19-21). Based on this statement in Vargo, the Examiner would then be required to find another reference which may be combined with Kwan and Vargo and, more importantly, which teaches Applicant's limitation of "adjusting the length of the second packet according to the adjusted length of the first packet and an arrival time of a third packet received after the second packet." The Examiner asserts that McClary provides such a teaching.

Applicant respectfully submits, however, that the "time adjustment" taught in McClary is completely different than the adjustment of a length of a packet using an arrival time of a subsequent packet, as taught in Applicant's invention. Rather, the time adjustment taught in McClary is adjustment to the timing of the operation of a component of a line card of a transmitter and/or a receiver in a transmission system. More specifically, McClary merely teaches techniques for adjusting the timing of the operation of a framer or deframer of a line card on which a TDM signal originates or is terminated. The difference between McClary and Applicant's invention may be better understood with respect to the following portions of McClary:

"[0077] Moreover, with regard to timing between a given deframer at the line card where a TDM signal is to be packetized and the corresponding framer where the packetized signal is reconstructed, a number of mechanisms may be employed. In an embodiment, the framer on the line card where the TDM signal is packetized and the framer on the line card where the signal is reconstructed from packetized data are timed from a common network clock, while the far end network element sending the TDM signal to be packetized is loop timed (i.e., its framer is timed according to the signal received by its deframer). In one embodiment, the framer where the TDM signal is reconstructed and the framer at the far end network element where the signal

Serial No. 09/829,314

Page 11 of 14

originated are both timed from a common network clock that is distributed by some other transmission path.

[0078] In an embodiment, the framer where the TDM signal is reconstructed and the framer where such signal originates are not constrained to have common timing, thereby allowing frame-slips to occur. In one embodiment, the timing of the framer where the signal is reconstructed is adjusted according to timing information inferred from the arrival time of the packets and/or the length of the queue of packetized TDM data to be sent. In an embodiment, the timing of the TDM signal to be packetized is compared against the network clock. Accordingly, a measure of the deviation is placed in the packets of the TDM data and transmitted to where the TDM signal is reconstructed and used to adjust the timing of the framer therein. However, embodiments of the present invention are not so limited. For example, in another embodiment, the deviation from the network clock can be communicated to the reconstructing line card by other means or transmission paths. The above-described embodiments of the techniques to provide timing between a given deframer and framer are by way of example and not by way of limitation, as other techniques to allowing for such timing can be incorporated into embodiments of the present invention."

[McClary, Para. 0078 – 0079, Emphasis added].

In other words, McClary merely teaches that, in one embodiment, rather than controlling the timing of the operation of a framer using network clock signals, the timing of the operation of a framer on which a signal is reconstructed may be controlled according to information local to the framer on which the signal is reconstructed. Specifically, McClary cites use of the arrival time of packets for controlling the timing of the operation of the framer. In other words, McClary merely teaches that information local to a framer, such as an arrival time of a packet, may be used as a pseudo clock signal which controls the timing of the operation of the framer.

As such, the use of an arrival time of a packet as a pseudo clock signal, in place of the typical network clock signal, to control or adjust the timing of the operation of a framing component of a line card, as taught in McClary, is simply not adjusting the length of a current packet according to an arrival time of a subsequent packet, as taught in Applicant's invention of at least claim 1.

Serial No. 09/829,314  
Page 12 of 14

Furthermore, control or adjustment of the timing of the operation of components of a line card, as taught in McClary has absolutely nothing to do with the packet length adjustments of Applicant's invention of least claim 1.

Moreover, since McClary teaches that the local information controls the timing of the operation of the framer or deframer, McClary merely teaches a system in which an arrival time of a current packet is used to control the timing of the processing of that current packet by the framer or deframer. McClary is devoid of any teaching or suggestion that an arrival time of a subsequent packet at a framer or deframer is used to control the timing of the processing of a current packet by the framer or deframer. As such, McClary simply cannot teach or suggest adjusting the length of a current packet according to an arrival time of a subsequent packet (i.e., a third packet received after the second packet, as claimed in at least Applicant's claim 1), as taught in Applicant's invention of at least claim 1. As such, Kwan, Vargo, and McClary, alone or in combination, fail to teach or suggest Applicant's invention of at least claim 1, as a whole.

The test under 35 U.S.C. §103 is not whether an improvement or a use set forth in a patent would have been obvious or non-obvious; rather the test is whether the claimed invention, considered as a whole, would have been obvious. Jones v. Hardy, 110 USPQ 1021, 1024 (Fed. Cir. 1984) (emphasis added). Thus, it is impermissible to focus either on the "gist" or "core" of the invention, Bausch & Lomb, Inc. v. Barnes-Hind/Hydrocurve, Inc., 230 USPQ 416, 420 (Fed. Cir. 1986) (emphasis added). Moreover, the invention as a whole is not restricted to the specific subject matter claimed, but also embraces its properties and the problem it solves. In re Wright, 6 USPQ 2d 1959, 1961 (Fed. Cir. 1988) (emphasis added). Kwan, Vargo and McClary alone or in combination fail to teach or suggest Applicant's invention as a whole.

As such, Applicant submits that independent claim 1 is not obvious and fully satisfies the requirements of 35 U.S.C. §103 and is patentable thereunder. Furthermore, independent claims 13, 25, 26, and 27 recite features substantially similar to the features of claim 1. Accordingly, for at least the reasons discussed

Serial No. 09/829,314

Page 13 of 14

above with respect to claim 1, claims 13, 25, 26, and 27 are non-obvious and are patentable over Kwan, Vargo and McClary, alone or in combination, under 35 U.S.C. §103(a).

As such, Applicant submits that independent claims 1, 13, 25, 26 and 27 are not obvious and fully satisfy the requirements of 35 U.S.C. §103 and are patentable thereunder. Furthermore, claims 2-12, 14-24 and 28-35 depend, either directly or indirectly, from independent claims 1, 13, 25, 26 and 27 and recite additional features therefor. Accordingly, and at least for the same reasons as discussed above, Applicant submits that these dependent claims are also not obvious and fully satisfy the requirements of 35 U.S.C. §103 and are patentable thereunder. Therefore, Applicant respectfully requests that the rejection be withdrawn.

#### **SECONDARY REFERENCES**

The secondary references made of record are noted. However, it is believed that the secondary references are no more pertinent to Applicant's disclosure than the primary references cited in the Office Action. Therefore, Applicant believes that a detailed discussion of the secondary references is not necessary for a full and complete response to this Office Action.

Serial No. 09/829,314  
Page 14 of 14

### CONCLUSION

Thus, Applicant submits that the pending claims are in condition for allowance. Accordingly, both reconsideration of this application and its swift passage to issue are earnestly solicited.

If, however, the Examiner believes that there are any unresolved issues requiring adverse final action in any of the claims now pending in the application, it is requested that the Examiner telephone Michael Bentley at (732) 383-1434 or Eamon J. Wall at (732) 530-9404 so that appropriate arrangements can be made for resolving such issues as expeditiously as possible.

Respectfully submitted,

6/20/06

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